

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

FEB 19 2001

CLERK'S OFFICE
U. S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
BALTIMORE

In re

FRANK'S NURSERY & CRAFTS, INC.,
et al.,

Debtors.

* Chapter 11 Cases

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* Case Number 01- *52415-JS THROUGH 01-52416-JS*
* (Jointly Administered)

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**DEBTORS' MOTION FOR ORDERS PURSUANT TO BANKRUPTCY
CODE SECTIONS 105, 107, 362, 363 AND 364 AND BANKRUPTCY
RULES 2002, 4001 AND 9014: (A) AUTHORIZING DEBTORS
IN POSSESSION TO OBTAIN SECURED SUPERPRIORITY
POSTPETITION FINANCING ON AN INTERIM AND FINAL BASIS;
(B) APPROVING AGREEMENTS RELATING TO FOREGOING;
(C) SCHEDULING A HEARING AND PRESCRIBING FORM
AND MANNER OF NOTICE; AND (D) GRANTING RELATED RELIEF,
INCLUDING APPROVAL OF A CASH COLLATERAL STIPULATION WITH CHASE**

Frank's Nursery & Crafts, Inc. ("Frank's") and FNC Holdings, Inc. ("FNC"), debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases, by their undersigned counsel, file this motion for orders pursuant to sections 105, 107, 362 and 364 of title 11 of the United States Code (the "Bankruptcy Code") and Bankruptcy Rules 2002, 4001 and 9014: (a) authorizing debtors in possession to obtain secured superpriority postpetition financing on an interim and final basis; (b) approving agreements relating to foregoing; (c) scheduling a hearing and prescribing form and manner of notice; and (d) granting related relief, including approval of a cash collateral stipulation with Chase (the "Motion"), and respectfully represent:

Relief Requested

1. By this Motion and pursuant to sections 105, 107, 362, 363 and 364 of the Bankruptcy Code, as supplemented by Rules 2002, 4001 and 9014 of the Federal Rules of

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Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek entry of two orders approving the terms and conditions for borrowing under an approximately \$100 million postpetition financing (the "DIP Facility") to be provided by a group of lenders (the "DIP Lenders") led by Wells Fargo Retail Finance, LLC ("Wells Fargo"). The first such order, entitled "Interim Order Pursuant to Sections 105, 107, 362 and 364 of the Bankruptcy Code and Rule 4001 Of The Federal Rules Of Bankruptcy Procedure Authorizing Debtor (1) To Obtain Interim Financing, (2) Granting Senior Liens And Super Priority Administrative Expense Status, (3) Modifying The Automatic Stay, and (4) Authorizing Debtor To Enter Into Agreements With Wells Fargo Retail Finance, LLC" (the "Interim Order"),¹ would approve the DIP Facility on an interim basis, pending a final hearing. Thereafter, following a final hearing, this Motion seeks approval of a final order approving the DIP Facility. The Final Order will be substantially in the form of the Interim Order annexed hereto, except that the Final Order would authorize the full borrowing under the DIP Facility.

2. The Debtors require the DIP facility to fund their day-to-day operations, including, without limitation, payment of employee wages and benefits, rent, utility charges, and other essential obligations, as well as acquisition of inventory. Unless this Court immediately authorizes interim financing under the DIP Facility, the Debtors will be unable to continue their ongoing operations or preserve the value of these estates.

3. Currently, substantially all of the Debtors' assets are encumbered by liens and mortgages held by the Debtors' existing bank lenders (the "Prepetition Lenders"). Thus, in order to obtain the DIP Facility, which is conditioned upon the DIP Lenders receiving a first lien on substantially all of the Debtors' assets, the Debtors must pay off the amounts due under their

¹ A copy of the proposed Interim Order is annexed hereto as Exhibit A.

existing credit facility. That pay down would be funded by the requested interim financing, but would be made subject to a full reservation of rights of all appropriate parties with standing.

4. As the approval of the Interim Order and the initial funding under the DIP Facility may not all occur on the filing date, this Motion also seeks approval of a short term cash collateral stipulation between the Debtors and the Prepetition Lenders that would assure the Debtors of immediate liquidity in order to continue operating.

The Chapter 11 Cases

5. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors intend to continue in possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. By motion submitted to the Court concurrently herewith, the Debtors seek entry of an order of this Court authorizing the procedural consolidation and joint administration of these cases.

The Debtors And Their Business Operations

7. Frank's, founded in 1949, operates the largest United States chain (as measured by sales) of specialty retail stores devoted to the sales of lawn and garden products. Lawn and garden products include green and flowering plants for outdoor and indoor usage, live landscape products such as trees and shrubs, fertilizers, seeds, bulbs, gardening tools and accessories, planters, watering equipment, garden statuary and furniture, wild bird food and feeders, mulches and specialty soils. Frank's also is a leading retailer of Christmas Trim-A-Tree merchandise, artificial flowers and arrangements, garden and floral crafts, and home decorative

products. FNC (formerly known as General Host Corporation) is the sole shareholder of Frank's.

8. As of February 9, 2001, Frank's operated 217 retail stores in 15 states, primarily in the Mid-Atlantic, Midwest and Northeast. At that time, an additional 44 stores were being closed as part of a previously announced plan to sell under-performing store locations. In its fiscal year ending January 28, 2001, Frank's had sales of approximately \$435 million. Currently, the Debtors employ approximately 1,900 full-time and 5,000 part-time employees. As of November 5, 2000, the Debtors had total assets of approximately \$471.9 million and total debt of approximately \$338 million.

9. The Debtors' sales are seasonal. The lawn and garden revenues are concentrated principally in the Spring and, to a lesser extent, in the Fall. The Trim-A-Tree sales occur between Thanksgiving and Christmas.

10. During most of the first half of 2000, weather patterns negatively impacted lawn and garden product sales across the Debtors' principal markets. During the third quarter of 2000, the Debtors decided to close 44 under-performing stores, liquidate their inventories, and sell the closed stores owned by the Debtors. Later in 2000 it became apparent that the Debtors' Trim-A-Tree holiday season sales were below expectations, which was consistent with the general softness in sales at retailers during this period.

11. In 2001, notwithstanding excess borrowing availability under their existing bank credit facilities, the Debtors were unable to draw down sufficient funding to meet the Debtors' working capital needs because the Prepetition Lenders asserted that various conditions to borrowing had not been met. (The Prepetition Lenders, however, did provide limited funding subject to various conditions.) Also, in the relatively short period since access to

their credit facilities had been curtailed, the Debtors were unable to secure additional funding to meet those working capital needs. Ultimately, the Debtors determined the most appropriate method to obtain such financing and achieve their restructuring objectives was through chapter 11 filings.

Need For Financing

12. The Debtors now have only a few million dollars of cash, much of which is cash collateral of the Prepetition Lenders. Further, virtually all cash to be generated by the Debtors' future inventory and asset sales would be cash collateral of the Prepetition Lenders. Moreover, even were the Debtors able to use all cash collateral from both existing and future inventory and asset sales, the Debtors would lack sufficient funds to ramp up for their primary season, the Spring. Hence, without immediate access to postpetition financing, the Debtors would lack sufficient liquidity to maintain their ongoing operations. Accordingly, absent immediate relief, the Debtors risk irreparable harm to and ultimately liquidation of their business.

Prepetition Senior Secured Financing

A. The Prepetition Credit Agreement

13. Prepetition, the Debtors' working and other capital financing was derived from trade credit and a financing facility provided by The Chase Manhattan Bank ("Chase"), as agent for the Prepetition Lenders² under a Credit Agreement, dated as of December 24, 1997 (as

2 As of the Petition Date, the Prepetition Lenders under the Prepetition Credit Agreement included Chase, First Source Financial LLP, Transamerica Business Credit Corporation, PPM Finance, Inc., IBJ Whitehall Bank & Trust Co. and Goldman Sachs Credit Partners L.P.

amended, the "Prepetition Credit Agreement").³ The Prepetition Credit Agreement covered: (a) a revolving line of credit, subject to a borrowing base, with an original maximum commitment of \$110 million (which includes a discretionary Swingline loan of up to 15 million and a \$25 million Letter of Credit sub-limit) and (b) a term loan in an amount of up to \$85 million. As of the Petition Date, there was approximately \$63 million outstanding under the Prepetition Credit Agreement.⁴

14. FNC executed a guaranty of Frank's obligations under the Prepetition Credit Agreement.

B. The Prepetition Lenders' Collateral

15. The applicable security documents provide for Frank's and FNC's obligations under the Prepetition Credit Agreement to be secured by mortgages on certain of Frank's real property, which includes approximately 62 stores, and liens against virtually all of the personal property of Frank's and FNC, including: (a) inventory; (b) accounts and accounts receivable; (c) intellectual property rights; (d) general intangibles; (e) equipment; (f) the capital stock of FNC and its direct and indirect subsidiaries, including Frank's; and (g) proceeds of the foregoing (collectively, the "Prepetition Collateral"). Accordingly, the Debtors believe they have few unencumbered assets.⁵

3 The summary herein of the Prepetition Credit Agreement is qualified in its entirety by reference to the Prepetition Credit Agreement itself. The Debtors reserve all rights regarding the Prepetition Lenders' claims, liens, mortgages, etc.

4 That amount excludes accrued and unpaid interest, fees and expenses.

5 Substantially all of the Debtors' other owned real property is encumbered by mortgages held by Chase and various other mortgagees. In fact, the Debtors own only one unencumbered parcel of real property, which is vacant land located in Boundbrook, New Jersey.

16. Pursuant to the Prepetition Credit Agreement, substantially all cash of the Debtors regularly is deposited into a concentration account under the sole dominion and control of the Prepetition Lenders as collateral for obligations incurred under the Prepetition Credit Agreement.

17. Based on the Debtors' review of the Prepetition Lender's security interests, collateral and mortgages, including the recordation thereof, the Debtors believe substantially all of the Prepetition Lenders' liens and mortgages are perfected and recorded.

C. The Likely Value of Prepetition Lenders' Collateral

18. The Debtors believe the value of the Prepetition Collateral signifies the Prepetition Lenders are oversecured. For example, under the Debtors' February 13, 2001 Borrowing Base Certificate issued in connection with the Prepetition Credit Agreement, the borrowing base value of the Prepetition Collateral, which consists of the cost of eligible inventory covered by the Prepetition Lenders' liens and 50% of the appraised value of certain real estate covered by the Prepetition Lenders' mortgages, was approximately \$118.5 million. Further, valuing the Prepetition Collateral as of the same date as the cost of all inventory and appraised value of all real estate covered by the Prepetition Lenders' liens and mortgages would yield an aggregate collateral value exceeding \$167 million.

19. An additional justification for payment of the Debtors' obligations under the Prepetition Credit Agreement is that such debt is "senior debt" under Frank's outstanding 10¼ senior subordinated notes, due 2008 (the "Bonds"), in the original principal amount of \$115 million.⁶ Bankers Trust Company serves as the Indenture Trustee for the Bonds, which are

⁶ Additionally, any refinancing of the Prepetition Credit Agreement also would constitute "senior debt" under the Indenture. Accordingly, any indebtedness incurred under the DIP Facility would be "senior debt."

unsecured. In the event the Prepetition Lenders' collateral turns out to have been of insufficient value to warrant full payment, the rights of all parties in interest regarding the effect of the pay down shortfall on the subordination of the Bonds would be preserved.

The Debtors' Cash Needs

20. During the first 30 days after the Petition Date, the Debtors expect to require approximately \$25 million (\$5.5 million net of expected collection amounts) for actual and necessary operating expenses, including payroll and inventory purchases.⁷ Accordingly, the Debtors require an immediate source of postpetition funding.

21. As a practical matter, in order for the Debtors to obtain such financing, the Debtors need to provide a new lender with senior liens on substantially all of the Debtors' assets. Accordingly, the Loan Documents provide for an immediate draw under the DIP Facility to repay the Prepetition Lender Debt. After such payment (of approximately \$63 million) is made, the Debtors would have up to approximately \$37 million available under the DIP Facility to finance their operations, subject to certain terms and conditions as set forth in the DIP Facility, including a borrowing base.

22. The repayment of the Prepetition Lender Debt would be subject to a broad reservation of rights, which shall include the right of any appropriate party with standing, such as a creditors' committee, to analyze and investigate, inter alia: (a) whether there are any defenses to repayment of or challenges to the amount of the Prepetition Lender Debt; (b) the validity, priority, extent and potential for avoidance of the liens alleged to secure such claims; and (c) whether there are any claims against the Prepetition Lenders. In that regard, the Debtors may

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This amount is exclusive of all fees payable in connection with entering into the DIP Facility and paying off the Prepetition Lender Debt.

have claims against the Prepetition Lenders related, inter alia, to the Prepetition Lenders' failure to honor various draw requests by Frank's under the Prepetition Credit Agreement during 2001. The Prepetition Lenders, however, assert that there were multiple events of default under the Prepetition Credit Agreement that terminated any obligation to continue to lend. As the Prepetition Lenders are established financial institutions, there should be little, if any, risk of recovery of any amounts that the Prepetition Lenders might be required to repay.

The Motion

23. After extensive arm's length negotiations, the DIP Lenders have agreed to provide the Debtors with the \$100 million DIP Facility. The Debtors believe the financial accommodations provided by the DIP Facility would provide the Debtors with the necessary liquidity to successfully manage their business and restructure their operations. In contrast, without the DIP Facility, the Debtors would have insufficient cash to reorganize. Consequently, this Court should approve the Loan Documents and authorize the Debtors to obtain the proposed postpetition financing.

A. The DIP Facility.

24. The specific financial terms and conditions of the DIP Facility are set forth in the Debtor-in-Possession Credit Agreement and related documents (the "DIP Loan Agreement" or "Loan Documents"). Certain key elements of the DIP Facility are summarized below:⁸

(a) Amount of Facility. The DIP Facility includes a revolving credit facility consisting of a maximum commitment of \$100 million. There is a \$60 million revolving facility (the "Revolving Facility"), inclusive of a \$15 million

⁸ Capitalized terms used in this section of the Motion that are not defined elsewhere herein have the meanings ascribed to such terms in the Loan Documents. To the extent the following summary contradicts terms of the Interim Order or Loan Documents, such Interim Order or Loan Documents shall control.

Swing Line sub-facility and a letter of credit sub-limit of \$15 million, and a \$40 million revolving special real estate line (the "Real Estate Line").

(b) The Borrower. Frank's, as debtor in possession.

(c) Guarantor. FNC, as debtor in possession.

(d) Availability. Availability under the Revolving Facility is determined by calculation of the amount of the Borrowing Base, less Availability Reserves (including the Carve Out (as defined below)). This Borrowing Base formula is the difference of (x) the lesser of (I) sum of (i) 70% of the Cost of Eligible Lawn & Garden Inventory; plus (ii) 55% of the Cost of Eligible Live Plants Inventory; plus (iii) 60% of the Cost of Eligible Floral and Crafts Inventory; plus (iv)(a) during Accounting Periods 7-12 of each fiscal year, 60% of the Cost of Eligible Christmas Decoration Inventory; or (b) during each other Accounting Period, 30% of the Cost of Eligible Christmas Decoration Inventory; or (II) 85% of the Net Retail Liquidation Value, minus (y) certain reserves. Availability under the Real Estate Line is limited to 50% of the Net Lendable Real Estate Value.

(e) Interest Rates.

(i) Nondefault Rate. The interest rate on Revolving Loans will be 3.5% per annum above the Eurodollar rate (i.e., LIBOR) or 1.75% above the Reference Rate. The interest rate on the Swing Line loans will be 1.75% above the Reference Rate. The Reference Rate is the publicly announced "prime rate" of Wells Fargo Bank N.A.

(ii) Default Rate: During the continuation of an Event of Default, the interest rate will be 3% above the Reference Rate.

(iii) Minimum Interest Rate. The minimum interest rate is 7% per annum.

(iv) Interest is payable monthly in arrears.

(f) Fees

(i) Letter of Credit Fees. The Debtors are obligated to pay a fee equal to 3% per annum on the undrawn amount of each outstanding letter of credit.

(ii) Origination Fee. There is an up front origination fee of 2% of the maximum amount available under the DIP Facility (i.e., \$2 million).

- (iii) Agency Fee. There is an annual Agency fee of \$100,000, payable annually in arrears.
- (iv) Servicing Fee. There is an annual Agent servicing fee of \$120,000, payable in twelve equal monthly installments commencing on March 1, 2001.
- (v) Unused Commitment Fee. There is an unused commitment fee of 0.50% per annum payable on the Average Unused Portion of the Total Commitment, earned and payable monthly.

(g) Financial Covenants. The Borrower is required to adhere to certain financial covenants, including a minimum level of EBITDA. There also is a limitation on capital expenditures.

(h) Term. Assuming the Final Order has been entered, borrowings under the DIP Facility shall be repaid in full, and the lending Commitments shall terminate, on the earlier of: (a) two years from the Closing Date; (b) the effective date of a plan of reorganization; and (c) acceleration of the Maturity Date after the occurrence of an event of default. A prepayment premium is required if the Debtor terminates the Financing Agreements prior to the Maturity Date; except that no prepayment premium will be owed if the termination is in connection with the effective date of a plan of reorganization of the Debtors occurring on or before the first anniversary of the Closing Date.

(i) Conditions Precedent. Closing of the DIP Facility requires satisfaction of the following conditions precedent, among others:

- (i) An Interim DIP Order shall have been entered by the Bankruptcy Court satisfactory in form and substance to the DIP Lenders and such order shall not have been stayed, modified, reversed or otherwise affected;
- (ii) Excess Availability on the Closing Date shall not be less than \$10 million;
- (iii) All obligations owing to the Prepetition Lenders shall have been paid (or cash collateralized) in full with proceeds of the initial advances and the commitments of the Prepetition Lenders shall have been terminated; and
- (iv) The Closing Date shall occur on or before March 10, 2001.

(j) Priority Status. Pursuant to Bankruptcy Code section 364(c)(1), the Debtors' obligations under the DIP Facility shall have priority over any and all administrative expenses (the "DIP Superpriority Claims") of the kind specified in Bankruptcy Code sections 503(b), 506(c), 507(a), 507(b), 546(c) and 726, subject

and subordinate to: (A) claims for allowed fees and expenses of professionals retained by the Debtors and a creditors' committee, up to a maximum of \$2 million (which shall be in addition to compensation previously paid) following the occurrence and continuation of an Event of Default, unless waived (the "Professional Fee Carve-Out"); and (B) fees required to be paid to the Office of the United States Trustee under 28 U.S.C. § 1930 and any fees payable to the Clerk of the Bankruptcy Court (the "US Trustee and Bankruptcy Clerk Fees" and together with the Professional Fee Carve-Out, collectively, the "Carve-Out").

(k) DIP Collateral.

- (i) Pursuant to section 364(c)(2), the Debtors' obligations under the DIP Facility shall be secured by first priority security interests in and liens on all properties and interests in property of the Debtors, now existing or hereafter acquired, which are not encumbered as of the Petition Date (the "DIP Senior Liens") including, but not limited to, all cash maintained in the Cash Collateral Account and, up to the amount paid under the Carve-Out, all avoidance actions; provided, however, that the DIP Senior Liens shall be subject and subordinate to the Carve-Out; and
- (ii) Pursuant to section 364(c)(3), the Debtors' obligations under the DIP Facility shall be secured by perfected junior security interests in and liens on the Debtors' now existing and hereafter acquired property (the "DIP Junior Liens"), subject and subordinate to (A) valid and perfected existing liens or security interests as of the Petition Date or a valid lien perfected (but not granted) after the Petition Date to the extent such post-Petition Date of perfection in respect of a prepetition claim is expressly permitted under the Bankruptcy Code, except for the those liens securing claims under the Prepetition Facility (the "Permitted Liens"), and (B) the Carve-Out. The property referred to in the preceding clauses (i) and (ii) is collectively referred to as the "DIP Collateral."

(l) Events of Default. The Events of Default under the Loan Documents are enumerated in Section 8 of the Loan Agreement. The principal bankruptcy related defaults include:

- (i) filing of a motion by the Debtor seeking an order, or an order is entered, appointing of a trustee or examiner with expanded powers;

- (ii) filing of a motion by the Debtor seeking an order, or an order is entered, dismissing or converting the Debtors' chapter 11 cases to chapter 7 cases;
- (iii) filing of a motion by the Debtor seeking an order, or an order is entered, permitting any administrative expense claim or any claim to have administrative priority as to the Debtors equal or superior to the priority of the DIP Lenders and the Agent in respect of the Obligations, or granting or permitting the grant of a Lien on any Collateral other than Permitted Liens;
- (iv) the entry of an order granting relief from the automatic stay to any other creditor that Agent determines is reasonably likely to result in a Material Adverse Change or involves property valued at more than \$500,000;
- (v) the failure of the Debtors, within ten (10) days after the Petition Date, to obtain entry of the Interim DIP Order;
- (vi) the failure of the Debtors, within thirty (30) days after the Interim DIP Order is entered, to obtain entry of the Final Order;
- (vii) the entry of an order, which order constitutes the stay, modification, appeal, or reversal of any Loan Documents, the Interim Order or Final Order; and
- (viii) the confirmation of any plan of reorganization that fails, among other things, to provide for the payment in full in cash of all obligations under the DIP Facility.

(m) DIP Lenders' Default Rights. Upon a default under the Loan Documents, the DIP Lenders shall have customary remedies, including, without limitation, the right (after providing four business days prior written notice to the Debtors, the U.S. Trustee and any statutory committee) to realize on all DIP Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court.

B. Refinancing of the Claims of the Prepetition Lenders.

25. Subject to this Court's approval, proceeds initially advanced under the DIP Facility would be used to pay down claims under the Prepetition Credit Agreement. Refinancing the Prepetition Lender Debt would provide the Debtors with several benefits.

26. First, the repayment would avoid accrual of further claims based on the default rate of interest under the Prepetition Credit Agreement (assuming acceleration of the Prepetition Lender Debt and an inability to continue LIBOR loans), which accrues at either the Chase prime rate plus 4.25% or Chase prime rate plus 4.50% (the "Prepetition Default Rate"). In contrast, the interest rate under the DIP Facility (3.5% per annum above LIBOR or 1.75% above Wells Fargo's prime rate) should be approximately 2.5% lower than the Prepetition Default Rate. That would equate to an annual savings of approximately \$1.5 million.

27. Second, the immediate refinancing of the Prepetition Lenders under the DIP Facility would avoid a potentially hostile lien priming and cash collateral fight with the Prepetition Lenders. That result is important given the Debtors' need for immediate postpetition financing and a stabilized chapter 11 environment.

28. Third, the DIP Facility should provide availability of up to approximately \$33 million more than the cash collateral that potentially could be available under the Prepetition Credit Agreement. This additional availability is essential to the Debtors' ability to promptly purchase their Spring inventory and continuing to operate their business in the ordinary course.

29. Moreover, as the proposed DIP Orders would reserve the rights of all appropriate parties with standing to challenge payments on and claims under the Prepetition Credit Agreement on any basis and the Prepetition Lenders are established financial institutions, there appears to be little potential for prejudice from the pay down.

C. Hilco

30. Pursuant to an Agency Agreement, the Debtors contracted for Hilco to conduct store-closing sales at 42 stores. Section 15 of the Agency Agreement attempts to have the Debtors forfeit certain critical rights of a debtor in possession. Specifically, Section 15 provides:

[Debtor] agrees that in the event a bankruptcy, reorganization, receivership or other similar proceeding is filed by or against it, (a) [Debtor] shall immediately move to assume its rights and obligations under this Agreement pursuant to section 365 of the Bankruptcy Code, (b) [Hilco] shall be free to pursue foreclosure and other remedies with respect to the Merchandise and the Proceeds without opposition or interference by [Debtor], (c) [Hilco] shall be entitled to seek and obtain relief from the automatic stay under section 362 of the Bankruptcy Code without objection by [Debtor] and (d) any rights of [Debtor] (whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise) to stay, enjoin or otherwise delay or impede [Hilco's] remedies against the Merchandise and the Proceeds, including, without limitation, [Hilco's] right to foreclose are hereby released and waived.

Agency Agreement at § 15.

31. Such prepetition waivers of the automatic stay generally are against public policy and not enforceable. Further, a condition of the DIP Facility is that the Interim and Final Orders contain a provision negating such stay-waiver provision. Accordingly, the forms of the Interim and Final Order each include a decretal paragraph negating any impact of Section 15 of the Hilco Agency Agreement. In any event, as it appears the Debtors currently are net creditors of Hilco, there appears to be little potential for prejudice from such a provision.

D. The Necessary Showings Under Section 364.

32. Section 364 of the Bankruptcy Code, which governs postpetition financing provides, in pertinent part:

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1304, 1203, or 1204 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense,

the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt --

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. §§ 364(a) through (c).

33. Generally, section 364 requires a debtor to demonstrate that alternative sources of credit are not available under section 364(a) or (b). See In re Ames Dep't Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Although there is "no duty to seek credit from every possible lender before concluding that such credit is unavailable," the statute obligates a debtor to show "by a good faith effort that credit was not available without the senior lien." Bray v. Shenandoah Fed. Savs. and Loan Assoc. (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986). Against this statutory backdrop, courts will evaluate the facts and circumstances of the debtor's case and will accord significant weight to the necessity for obtaining the financing. See, e.g., In re Snowshoe, 789 F.2d at 1088; In re Ames, 115 B.R. at 40.

34. As set forth below, the Debtors could not obtain postpetition working capital financing on an unsecured basis. Rather, the Debtors need to obtain secured DIP financing under section 364(c). As the Debtors satisfy the requirements of section 364(c), this Court should authorize the Debtors to enter into the Loan Documents.

E. The Debtors' Search For The Best DIP Financing Available

35. During the past approximately 45 days, the Debtors talked to at least 6 potential lending sources regarding DIP financing. Other than the Prepetition Lenders, Wells

Fargo was the only lender to make a formal proposal to the Debtors. The Debtors concurrently undertook extensive negotiations with the Prepetition Lenders and Wells Fargo to obtain the best possible terms for a DIP Facility. Both Wells Fargo and the Prepetition Lenders insisted on postpetition financing providing for superpriority claims and liens having the highest priority available after giving effect to existing liens. The Prepetition Lenders also insisted on a release from the Debtors, subject to a full reservation of rights for an official committee.

36. After extensive negotiations, it became apparent that the Prepetition Lenders were unlikely to meet the Debtors' time table or provide a desirable DIP Facility. Meanwhile, the Debtors were able to obtain a financing facility from the DIP Lenders that offers the Debtors sufficient funding. The Debtors believe the DIP Lenders' proposal is the best financing now available to the Debtors. Also, the Debtors believe the terms of the Loan Documents are fair and reasonable under the circumstances.

37. Further, the Debtors believe the terms of the Loan Document, and the related proposed orders, were negotiated in good faith and at arm's length. Accordingly, the DIP Lenders should be provided with the benefit of section 364(e) of the Bankruptcy Code.

F. Cash Collateral Stipulation

38. As substantially all of the Debtors' cash is asserted to be cash collateral of the Prepetition Lenders, the Debtors require authorization to use such cash collateral pending entry of the Interim DIP Order authorizing the Debtors to enter into the DIP Loan Documents and close to obtain funding thereunder. In that regard, a proposed cash collateral stipulation is annexed hereto as Exhibit B. The key terms of that stipulation include the following:

- (a) Term. Three business days.
- (b) Availability. The Debtors use of cash collateral will be restricted to use consistent with a budget and limited to amounts

available under the borrowing base provided for in the Prepetition Credit Agreement.

(c) Required Payments. The Debtors will be required to immediately pay the Prepetition Lenders all accrued and unpaid interest at the nondefault rate and fees due under the Prepetition Credit Agreement, subject to a full reservation of rights of all parties with standing to bring an appropriate action within 9 months of the appointment of a creditors' committee.

(d) Acknowledgements. The Debtors will acknowledge the amount of the Prepetition Lenders claims and the validity of their liens, subject to a full reservation of rights of all other appropriate parties with standing.

(e) Priority Claims and Liens. Any diminution in the value of the Prepetition Lenders' collateral would be covered by (i) replacement liens on all of the Debtors' assets, subject to only the valid preexisting liens and (ii) a superpriority administrative expense claim. Those replacement liens and superpriority claim exclude avoidance actions.

(f) Termination Events and Remedies. The Debtors' rights to use cash collateral would terminate upon the occurrence of various typical bankruptcy triggers and the Prepetition Lenders then would be able to freeze the Debtors' Chase bank accounts.

(g) Limitations on Actions. There would not be joint and several liability among the Prepetition Lenders if any amounts paid by the Debtors to the Prepetition Lenders postpetition must be disgorged.

G. Notice

39. Pursuant to Bankruptcy Rule 4001, the Debtors respectfully request authorization to provide notice of this Motion and the time, place, and nature of the interim hearing by using their best efforts as practicable under the circumstances, whether by telephone, facsimile, overnight courier or by hand delivery, by serving a notice of the Motion and of the interim hearing on each of the parties set forth below: (1) the Office of the United States Trustee, (2) the Agent [Wells Fargo Retail Finance, LLC] and attorneys for Agent, (3) all known secured creditors of the Debtors, including the Pre-Petition Lenders and mortgagees on real property

owned by the Debtors, (4) all attorneys who have filed a request for service of all pleadings and notices prior to service of such notice, (5) such taxing authorities known by the Debtors to have asserted a lien against the Debtors, (6) Debtors' consolidated thirty (30) largest unsecured creditors, (7) all lessors of any real property upon which the Debtors conduct their businesses ("Landlords"), (8) all financial institutions at which the Debtors or their affiliates maintain an account, (9) Hilco Merchant Resources, Inc. ("Hilco"), and (10) Bankers Trust Company, as Indenture Trustee.

40. The Debtors further respectfully request, pursuant to Bankruptcy Rule 4001, authorization to provide notice of the final hearing on the relief sought in the Motion by on or before February 21, 2001, service by overnight courier copies of a notice of approval of the Interim Order, together with a copy of the Interim Order, to (i) the parties having been given notice of the interim hearing, (ii) any other party which has filed a request for special notice with this Court and served such request on Debtors' counsel prior to such date, (iii) counsel for any statutory committee; and (iv) to all Landlords; provided, however, that counsel to the Creditors' Committee shall be served as soon as practicable after formation and retention and any party requesting notice shall be served as soon as practicable after receipt by Debtors' counsel of such request. The notice of approval of the Interim Order shall state that any party in interest objecting to the approval of the proposed Final Order shall file written objections with the United States Bankruptcy Court Clerk for the District of Maryland no later than the date set by the Court, which objections shall be served so that the same are received on or before 4:30 P.M. of such date by the United States Trustee and the following counsel:

Counsel to Debtors:

Alan J. Lipkin
Tonny K. Ho
Willkie Farr & Gallagher
787 Seventh Avenue
New York, NY 10019
Phone: (212) 728-8000
Fax: (212) 728-8111

and

Martin Fletcher
Whiteford, Taylor & Preston LLP
Seven Saint Paul Street
Baltimore, MD 21202-1626
Phone: (410) 347-8737
Fax: (410) 625-7510

Counsel to Agent:

Peter M. Palladino
Douglas R. Gooding
John F. Ventola
Choate, Hall & Stewart
Exchange Place
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Boston, MA 02109
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and

Nancy V. Alquist
Ballard Spahr Andrews & Ingersoll, LLP
300 East Lombard Street
Baltimore, MD 21202-3268
Phone: (410) 528-5600
Fax: (410) 528-5650

Counsel to Pre-Petition Lenders: Andrew DeNatale

Evan C. Hollander
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Phone: (212) 819-8200
Fax: (212) 345-8113

41. The cost of mailing a notice to all creditors in these cases would be exceedingly expensive and would not, in the Debtors' view, confer any substantial benefit on the Debtors, their estates or their creditors. Accordingly, and in light of the urgency of the relief requested, the Debtors respectfully request that any further notice of the final hearing, and of the relief requested, other than as provided for in this Motion, be dispensed with and waived.

No Previous Request

42. No previous motion or application for the relief sought herein has been made to this or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request (a) entry of the Interim and Final DIP Orders and (b) that the Court grant such other and further relief as is just and proper.

WILLKIE FARR & GALLAGHER

Alan J. Lipkin, Esquire

Carol Lynn H.G. Pedreira, Esquire

Steven Wilamowsky, Esquire

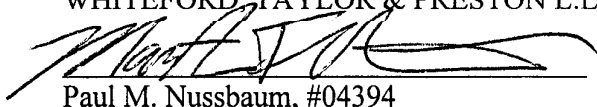
787 Seventh Avenue

New York, New York 10019-6099

(212) 728-8000

and

WHITEFORD, TAYLOR & PRESTON L.L.P.



Paul M. Nussbaum, #04394

Martin T. Fletcher, #07608

Seven Saint Paul Street, Suite 1400

Baltimore, Maryland 21202

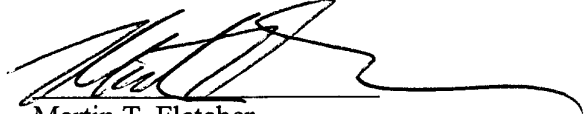
(410) 347-8700

Co-Counsel for the Debtors,

Frank's Nursery & Crafts, Inc., et al.

CERTIFICATE OF SERVICE

I certify that on this 19th day of February, 2001, a copy of the foregoing pleading was sent by the means indicated and to the parties identified on the Omnibus Certificate of Service filed concurrently with this pleading. In order to expedite the copying and transmittal of pleadings to parties in interest, a copy of the Omnibus Certificate of Service was not transmitted with the pleading. Any party desiring a copy of the Omnibus Certificate of Service may contact the undersigned or may review the original at the Clerk's Office.



Martin T. Fletcher

1332431

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re FRANK'S NURSERY & CRAFTS, INC., <u>et al.</u> , <div style="text-align: center;">Debtors.</div>	* * * * * *	Chapter 11 Cases Case Number 01- (Jointly Administered) * * * * * *
* * * * * * * * *		* * * * * *

INTERIM ORDER PURSUANT TO SECTIONS 105, 107, 362 AND 364 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING DEBTORS (1) TO OBTAIN INTERIM FINANCING, (2) GRANTING SENIOR LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (3) MODIFYING THE AUTOMATIC STAY AND (4) AUTHORIZING DEBTORS TO ENTER INTO AGREEMENTS WITH WELLS FARGO RETAIL FINANCE, LLC

THIS MATTER came before the Court for an interim hearing on February __, 2001, upon the Motion ("Motion"), filed on February __, 2001 (the "Petition Date"), of Frank's Nursery & Crafts, Inc., (hereinafter "Frank's") and of FNC Holdings, Inc. (hereinafter, "FNC" and together with Frank's, the "Debtors") seeking, inter alia:

a. authority, pursuant to Sections 105, 107, 362 and 364 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure and any applicable local bankruptcy rules (collectively the "Bankruptcy Rules"), for the Debtors to obtain post-petition loans, advances and other financial accommodations (the "Financing") on an interim and permanent basis from Wells Fargo Retail Finance, LLC, as agent (the "Agent") for a syndicate of other financial institutions arranged by Agent and defined as "Lenders" in the Financing Agreements (as hereinafter defined) in accordance with the formulae and the terms and conditions set forth in the Financing Agreements;

b. authority to enter into a certain Loan and Security Agreement dated February __, 2001 (the "Loan and Security Agreement") and the related loan, financing, security agreements and mortgages and fee letter by and among the Debtors, the Agent and the Lenders named therein (collectively, the "Financing Agreements") (terms not otherwise defined herein shall have the meanings set forth in the Financing Agreements);

c. approval of all of the terms and conditions of the Financing Agreements by and between Debtors and Agent and the Lenders as so ratified, extended, adopted and amended;

d. modification of the automatic stay;

e. to grant super-priority administrative claim status upon Agent and Lenders pursuant to Section 364(c)(1) of the Bankruptcy Code as well as senior and junior liens pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code;

f. permission to refinance the Pre-Petition Lenders (as that term is defined herein) subject to a full reservation of rights;

g. authority to enter into an unlimited guaranty and pledge and security agreement (collectively, the "Parent Financing Documents") by FNC, pursuant to which FNC will guarantee all of Frank's obligations and liabilities under the Financing Agreements and grant a Lien in all of its assets to Agent (on behalf of Lenders) to secure such guarantee;

h. to provide for the filing of the Business Plan under seal pursuant to Section 107 of the Bankruptcy Code; and

i. the setting of a final hearing on the Motion.

IT APPEARING THAT, at or prior to the hearing on the Motion, pursuant to Bankruptcy Rules 4001(b), (c) and (d), the Debtors have used their best efforts to provide each of the parties set forth below such notice of the time, place, and nature of the interim hearing as practicable under the circumstances, whether by telephone, facsimile, overnight courier or by hand delivery: (1) the Office of the United States Trustee, (2) the Agent and attorneys for Agent, (3) all known secured creditors of the Debtors, including the Pre-Petition Lenders and mortgagees on real property owned by the Debtors, (4) all attorneys who have filed a request for service of all

pleadings and notices prior to service of such notice, (5) such taxing authorities known by the Debtors to have asserted a lien against the Debtors, (6) Debtors' consolidated thirty (30) largest unsecured creditors, (7) all lessors of any real property upon which the Debtors conduct their businesses ("Landlords"), (8) all financial institutions at which the Debtors or their affiliates maintain an account, (9) Hilco Merchant Resources, Inc. ("Hilco"), and (10) Bankers Trust Company, as Trustee, and it further

APPEARING, that each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on the Petition Date and is continuing in the management and possession of its businesses and properties as a debtor and debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and it further

APPEARING, that, as of the Petition Date, the Debtors each were indebted to The Chase Manhattan Bank ("Chase") and other lenders (collectively with Chase, the "Pre-Petition Lenders") on account of advances under a revolving credit facility (the "Pre-Petition Revolving Credit Facility") established by a certain Credit Agreement dated as of December 24, 1997 as supplemented and amended (the "Pre-Petition Credit Agreement") and related documents (the "Chase Agreements") in the approximate amount of \$63 million (the "Chase Claim"), secured by first priority security interests and liens in substantially all of the Debtors' pre-petition personal property and first priority security interests in and mortgages on certain real estate owned by the Debtors (collectively, the "Chase Pre-Petition Collateral") pursuant to the Chase Agreements; and it further

APPEARING, that without the financing proposed by the Motion, the Debtors will not have the funds necessary to pay their payroll, payroll taxes, inventory suppliers and other critical vendors, overhead and other expenses necessary for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and properties; and it further

APPEARING, that the Debtors have requested that Agent and Lenders make loans and advances and provide other financial and credit accommodations to the Debtors in order to

provide funds to be used by Frank's for its general operating, working capital and other business purposes in the ordinary course of Frank's business and for payment of the Chase Claim; and it further

APPEARING, that all such additional loans, advances and other financial accommodations by Agent and Lenders will benefit the Debtors and their estates and creditors; and it further

APPEARING, that the ability of the Debtors to continue their businesses and remain viable entities and thereafter reorganize under Chapter 11 of the Bankruptcy Code depends upon the Debtors obtaining such financing from Agent and Lenders; and it further

APPEARING, that Frank's has prepared a Business Plan covering the period through January 31, 2002 (the "Business Plan"), which has been reviewed by Frank's and its management and sets forth, among other things, the working capital and other cash requirements of Frank's for the periods covered thereby, and has been relied upon by Agent and Lenders in determining to enter into post-petition financing arrangements with the Debtors; and it further

APPEARING, that Agent and Lenders are willing to make loans and advances and issue letters of credit and extend other financial and credit accommodations to the Debtors on a secured and administrative priority basis as described herein and subject to the terms and conditions contained herein; and it further

APPEARING, that the relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and properties and is in the best interests of the Debtors and their estates and creditors;

NOW, THEREFORE, upon the record set forth by the Debtors, including the Motion, the other pleadings in this case, the record of the proceedings heretofore held before this Court with respect to the Motion and upon completion of the interim hearing and sufficient cause appearing therefor, the Court hereby finds as follows:

A. The Debtors are unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, or pursuant to Sections 364(a) and (b) of the Bankruptcy Code.

B. Despite diligent efforts, the Debtors are unable to procure other financing in exchange for the grant of an administrative expense priority pursuant to Bankruptcy Code Section 364(c)(1). As of the date of the Motion, Debtors have been unable to procure the financing necessary to continue as viable businesses on terms more favorable than those contained in the Financing Agreements. Based on the foregoing, it is improbable that the Debtors would be able to obtain any other financing in an amount sufficient to provide for Debtors' current and anticipated needs without granting the liens and security interest hereunder on all or substantially all of the Debtors' assets. Under the circumstances, no other source of financing exists on terms more favorable than those offered by Agent and Lenders.

C. The notice of the hearing on the Motion constitutes sufficient and adequate notice in accordance with Bankruptcy Rules 4001(b), (c) and (d), and Bankruptcy Code Sections 102(1) and 364(c). No further notice of the relief sought in the Motion is required.

D. Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District under 28 U.S.C. Sections 1408 and 1409.

E. Good, adequate and sufficient cause has been shown to justify the granting of the interim relief requested herein, and the immediate entry of this Interim Order.

F. The relief granted by this Court pursuant to this Interim Order is necessary to avoid immediate and irreparable harm and injury to Debtors and their estates.

G. The terms and conditions of the Financing Agreements are fair, just and reasonable under the circumstances and reflect Debtors' prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. Based on the record before this Court, the Financing has been negotiated in good

faith and at arms' length by and between the parties, with all parties represented by counsel. Accordingly, any credit extended or financing provided pursuant to this Interim Order shall be deemed to have been extended or provided in good faith under Section 364(e) of the Bankruptcy Code.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

1. The Motion is granted on an interim basis, effective as of the Entry of this Order. Any objections to the Motion which have not been withdrawn are hereby overruled. This Order shall be referred to as the "Interim Order."

2. Sufficient and appropriate notice of the Motion and the hearing requesting the entry of this Interim Order has been provided.

3. Pending final hearing on this Court's approval of the Financing Agreements and entry of a final order (the "Final Order"), the Debtors are hereby authorized and empowered to immediately borrow and obtain other financial accommodations from Agent and Lenders pursuant to the terms of this Interim Order and the terms and conditions set forth in the Financing Agreements, in such amount or amounts as may be made available to the Debtors by Agent and Lenders up to the aggregate amount of \$_____ in Advances (including any letters of credit) and including, without limitation, an amount sufficient to pay the Chase Claim in full and cash-collateralize any outstanding letters of credit issued under the Chase Agreements including any interest, fees, costs and expenses accruing under the Chase Agreements through the date of payment in accordance with the terms and conditions set forth in this Interim Order.

4. Debtors shall use the proceeds of the loans and advances made by Agent and Lenders to Debtors pursuant to this Interim Order and the Financing Agreements, only for the payment of employee salaries, payroll, taxes, the purchase of inventory and other general operating and working capital purposes in the ordinary course of Debtors' businesses in accordance with the Business Plan and for payment of the Chase Claim.

5. The Debtors are authorized and directed to enter into, execute, deliver, perform and comply and continue to perform and comply with all of the terms, conditions and covenants

of the Financing Agreements including, without limitation, the Fee Letter, as may be amended from time to time by agreement of the Debtors and Agent (on behalf of Lenders) and such terms, conditions and covenants shall be sufficient and conclusive evidence of the borrowing arrangements between Debtors and Agent (on behalf of Lenders) and of the Debtors' agreement to and adoption of the terms, conditions and covenants of the Financing Agreements for all purposes, including, without limitation, the payment of all principal, interest, and fees and expenses, all as more fully set forth in the Financing Agreements. The executed Financing Agreements shall constitute valid and binding obligations of the Debtors enforceable in accordance with their respective terms.

6. As security for the Obligations, the Agent and the Lenders shall have and are hereby granted (effective upon Entry of this Order and without the necessity of the recordation of mortgages, security agreements, pledge agreements, financing statements or otherwise) valid and perfected security interests in, and liens and mortgages (the "Liens"), upon all present and after-acquired property of the Debtors of any nature whatsoever, whether real or personal, including, without limitation, all cash contained in any account maintained by Debtors, accounts, accounts receivable, inventory, equipment, vehicles, furniture, fixtures, intellectual property, investment property, intercompany claims, contract rights, general intangibles, any and all amounts due from Hilco, including the so-called "Guaranteed Amount" and any amounts payable under letters of credit, and the proceeds of all causes of action (including causes of action arising under the Bankruptcy Code) (collectively with all proceeds and products of any or all of the foregoing, including proceeds of sale of real property, the "Collateral");

(a) pursuant to Section 364(c)(2) of the Bankruptcy Code, a first priority, perfected Lien upon all of the Debtors' right, title and interest in, to and under all Collateral that is not otherwise encumbered by a valid security interest or lien on the Petition Date including, without limitation, upon the Core Properties appearing on the attached Exhibit A, Leasehold Interests, and property in which the Pre-Petition Lenders held or asserted a first priority security interest as of the Petition Date; and

(b) pursuant to Section 364(c)(3) of the Bankruptcy Code, a second priority, junior, perfected Lien upon all of the Debtors' right, title and interest in, to and under all Collateral that is subject to a valid security interest or lien in existence as of the Petition Date including, without limitation, upon the real property owned by the Debtors appearing on the attached Exhibit B (the "Second Priority Real Estate").

Notwithstanding anything to the contrary contained herein, the Liens and super-priority administrative claims of Agent and Lenders in and to proceeds realized from actions commenced pursuant to Bankruptcy Code Sections 544, 547, 548 and 550 shall be limited to the amount of the Carve-Out funded by Agent and Lenders. Except to the extent expressly set forth in clause (b) of this paragraph 6 and paragraph 19, the Liens granted pursuant to this Interim Order and the Financing Agreements to the Agent for the benefit of the Lenders to secure the Obligations shall not (i) be subordinated to or made pari passu with any other lien or security interest or (ii) be subject to any lien or security interest which is avoided and preserved for the benefit of the Debtors' estates under Section 551 of the Bankruptcy Code.

7. Agent and Lenders shall have all rights and remedies with respect to the Debtors, the Obligations and the Collateral as are set forth in the Financing Agreements and this Interim Order. All obligations of the Debtors to the Agent under the Financing Agreements and this Interim Order shall constitute "Senior Debt" within the meaning of and as defined by that certain Indenture dated as of February 26, 1998 among the Debtors and Bankers Trust Company, as Trustee.

8. At Agent's discretion, the Financing Agreements shall be subject to termination as to any future loans, advances and other credit accommodations to be made or provided by Agent and Lenders to Debtors upon the occurrence of any Event of Default (as defined in the Financing Agreements) or the termination of Debtors' rights to borrow or obtain other credit accommodations from Agent and Lenders pursuant to the Financing Agreements or if sooner provided by an order of this Court.

9. The Debtors have provided the Court and the Agent and Lenders with the Business Plan upon which the Agent and Lenders are relying in agreeing to enter into the Financing Agreements. The Debtors shall provide Agent and Lenders with additional and/or updated Business Plans in such form and such detail as may be reasonably requested by Agent. The Business Plan shall be filed with the Court under seal pursuant to Section 107 of the Bankruptcy Code; provided, however, that any official committee of unsecured creditors or pre-petition creditor that is not a competitor of the Debtors shall be entitled to obtain a copy of the Business Plan upon (i) the execution and delivery of a confidentiality agreement in form and substance acceptable to the Debtors, or (ii) as may be ordered by the Court.

10. Agent may, in its discretion, apply the proceeds of the Collateral or any other amounts received by Agent in respect of the Obligations, in such order or manner as Agent may deem appropriate.

11. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection and validity of all of the security interests and mortgages in and liens upon the property of the Debtors' estates granted to Agent (on behalf of Lenders) as set forth herein and in the Financing Agreements, without the necessity of filing, recording or serving any financing statements, leasehold mortgages, mortgages, deeds of trust, or other documents which may otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the security interests and liens granted to Agent (on behalf of Lenders) in this Interim Order and the Financing Agreements. If the Agent shall, in its discretion, elect for any reason to file any such financing statements, leasehold mortgages, mortgages, deeds of trust, or other documents with respect to such security interests and liens, the Debtors are authorized and directed to execute, or cause to be executed, all such financing statements, mortgages or other documents upon Agent's request and the filing, recording or service thereof (as the case may be) of such financing statements, mortgages or similar documents shall be deemed to have been made at the time of and on the Petition Date. The Agent may, in its discretion, file a certified copy of this Interim Order in any filing or recording

office in any county or other jurisdiction in which the Debtors have an interest in real or personal property and, in such event, the subject filing or recording officer is authorized and directed to file or record such certified copy of this Interim Order. The liens, security interests and mortgages granted Agent hereby shall be deemed valid and perfected notwithstanding the requirements of non-bankruptcy law with respect to perfection.

12. Pursuant to Sections 363(b)(1) and 364(c)(2) of the Bankruptcy Code, any provisions in any of the Leasehold Interests or Permitted Mortgages that require the consent or approval of one or more of the Landlords or mortgagees in order for the Debtors to pledge or mortgage such Leasehold Interests or mortgage interests in accordance with the Financing Agreements are and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code and are and shall have no force and effect with respect to the transactions granting the Agent an interest in Leasehold Interests and in the Second Priority Real Estate in accordance with the terms of the Financing Agreements.

13. The Debtors are hereby authorized and directed to perform all acts, and execute and comply with the terms of such other documents, including, without limitation the Leasehold Mortgages as the Agent may reasonably require as evidence of and for the protection of the Obligations and the Collateral or which may be otherwise deemed necessary by Agent to effectuate the terms and conditions of this Interim Order and the Financing Agreements. The Debtors are authorized to pay reasonable costs and expenses related to the foregoing.

14. The Debtors are authorized and directed to: (a) in accordance with the DDA Notification, deposit or cause to be deposited into the Concentration Account established for the benefit of the Agent and Lenders in accordance with the Financing Agreements, all collections and all other proceeds of the Collateral, including any sums payable to Debtors under the Hilco Agreement and any sums payable by credit card processors and any other payments received from their account debtors and other parties, now or hereafter obligated to pay Debtors for services provided by Debtors or for inventory or other property of the Debtors' estates, including without limitation, any amounts received on account of any sale or liquidation of any of the

Debtors' inventory; and Agent is authorized to apply such payments and proceeds received by Agent (on behalf of Lenders) to the Obligations as set forth in this Interim Order and the Financing Agreements; (b) enter into similar arrangements with such other banks as are designated for such purposes pursuant to the Financing Agreements; (c) instruct, to the extent required by the Financing Agreements, all account debtors and other parties now or hereafter obligated to pay the Debtors for goods and services provided by Debtors to them or for inventory or other property of Debtors' estates in which Agent has a security interest or lien to remit such payments to the Concentration Account or, at Agent's election, directly to Agent; and (d) enter into such agreements as may be necessary to effectuate the foregoing. All financial institutions at which the Debtors maintain depository accounts shall remit funds to the Concentration Account each business day in accordance with the DDA Notification delivered by Agent.

15. The Debtors are authorized and directed, without further order of this Court, to pay or reimburse Agent and Lenders for all present and future reasonable costs and expenses, including attorneys' fees and legal expenses, paid or incurred by Agent or Lenders to effectuate the financing transactions as provided in this Interim Order and the Financing Agreements, all of which unpaid fees, commissions, costs and expenses shall be and are included as part of the Obligations, and shall be secured by the Collateral.

16. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit Agent and Lenders to implement the terms and conditions of the Financing Agreements and the provisions of this Interim Order.

17. The Debtors are authorized and directed to deliver to Agent all of the documentation and other information which Debtors are required to provide to Agent under the Financing Agreements and this Interim Order, including, without limitation, such reports, forecasts and other documentation required by Section 6.2 of the Loan and Security Agreement.

18. For all of the Obligations, and in addition to the foregoing and subject only to the Carve-Out, Agent is granted an allowed super-priority administrative claim in accordance with Section 364(c)(1) of the Bankruptcy Code having priority in right of payment over any and all

other obligations, liabilities and indebtedness of the Debtors, now in existence or hereafter incurred by Debtors and over any and all administrative expenses or priority claims of the kinds specified in, or ordered pursuant to any provision of the Bankruptcy Code, including Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c) or 726 and over all rights of set-off recognized under the Bankruptcy Code.

19. Notwithstanding anything to the contrary contained in this Order, Agent's and Lenders liens, security interests and super-priority administrative expense claim shall be subject and subordinate only to (i) amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the clerk of the Court (collectively, the "UST/Clerk Fees"); and (ii) allowed, unpaid fees and expenses of attorneys, accountants, and other professionals retained in the Bankruptcy Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code ("Priority Professional Expenses"), but the amount entitled to priority under this sub-clause (ii) shall not exceed \$2,000,000 outstanding in the aggregate at any time (the "Professional Expense Cap," and together with the UST/Clerk Fees, the "Carve Out"); provided, however, that: (A) after Agent has provided fax or hand-delivered notice to the Debtors of the occurrence of an Event of Default under the Financing Agreements or a default by Debtors under this Interim Order or the Final Order, any payments actually made to such professionals after the occurrence and during such continuance of such Event of Default or default hereunder pursuant to Sections 330 and 331 of the Bankruptcy Code or otherwise, shall reduce the Professional Expense Cap on a dollar-for-dollar basis; and (B) for the avoidance of doubt, any payment actually made to such professionals prior to the notice described in clause (A) above may be retained by such professionals and shall not reduce the Professional Expense Cap. The Carve Out shall be free and clear of all liens, claims and encumbrances granted hereunder and shall be subject only to the allowed claims of counsel to Debtors, counsel to any committee of creditors appointed pursuant to Section 1102 and other court appointed professionals ("Professionals") for such fees and expenses as may be awarded by this Court under Sections 330 and 331 of the Code, provided, however, the Carve Out cannot be used for the payment or reimbursement of any fees

or disbursements of Debtors or any committee of creditors incurred in connection with the assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief: (A) invalidating, setting aside, avoiding, subordinating, in whole or in part, the Obligations or Agent's and Lenders' liens and security interests in any of the Collateral; or (B) preventing, hindering or delaying, whether directly or indirectly, Agent's or Lenders' assertion or enforcement of its liens or realization upon any Collateral. Except as provided for in this paragraph, no other claim or right of set-off, including, without limitation any post-petition super-priority administrative claims granted by order of the Bankruptcy Court, shall be granted or allowed priority superior to or pari passu with the priority of the claims of Agent granted by this Interim Order while any of the Obligations remain outstanding.

20. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior written consent of Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by Agent), except for sales of the Debtors' Inventory in the ordinary course of their businesses, or any storage or any distribution warehouse transfers or inter-store transfers of inventory, or as may be permitted by the Financing Agreements or otherwise consented to by Agent.

21. The Debtors' having waived and relinquished all rights under and pursuant to Bankruptcy Code Section 506(c), no costs or expenses of administration which have or may be incurred (by the Debtors or any other party) in the Debtors' Chapter 11 cases, or in any conversion of the Chapter 11 cases, pursuant to Section 506(c) of the Bankruptcy Code, shall be charged against Agent or the Lenders, their claims, or the Collateral, without the prior written consent of Agent and no such consent shall be implied from any other action, inaction or acquiescence by Agent and no obligations incurred or payments or other transfers made by or on behalf of the Debtors, including, without limitation, funding of the payment of the Chase Claim, shall be avoidable or recoverable from Agent and Lenders under Sections 542, 544, 547, 548, 549, 550, 553 or any other provision of the Bankruptcy Code; provided, however, that nothing

contained in this Interim Order or in the Financing Agreements shall constitute a release or waiver of any claims or causes of action that the Debtors or their estates have or may have against the Pre-Petition Lenders or the liens and claims relating to the Chase Agreements.

22. An event of default under this Interim Order ("Event of Default") shall include an Event of Default under any of the Financing Agreements, including, without limitation, those Events of Default set forth in Section 8 of the Loan Agreement. Unless such Event of Default is specifically waived in writing by Agent, which waiver shall not be implied from any other action, inaction or acquiescence by Agent, upon or after the occurrence of an Event of Default and at all times thereafter, in accordance with the terms of the Financing Agreements, Agent shall have no obligation to lend or advance any additional funds to Debtors, or provide other financial accommodations to Debtors, and after giving four (4) business days notice in writing, served by overnight delivery service or fax upon Debtors, Debtors' counsel, counsel to any committee of creditors, a trustee if appointed and the United States Trustee: without need for further order or action of the Bankruptcy Court, (1) all of the Obligations shall become immediately due and payable, and (2) Agent (on behalf of Lenders) shall be relieved from the automatic stay provided for pursuant to Section 362 of the Bankruptcy Code and any other restrictions on the enforcement of its Liens and security interests or any other rights under the Financing Agreements granted to or for the benefit of Agent and Lenders or pursuant to this Interim Order and Agent, in its discretion, may take any and all actions or remedies which Agent may deem appropriate to proceed against and realize upon the Collateral and any other property of the Debtors' estates upon which it has been or may hereafter be granted Liens and security interests to obtain repayment of the Obligations.

23. Until all of the Obligations shall have been indefeasibly paid and satisfied in full and without further order of the Court: (a) no other party shall foreclose or otherwise seek to enforce any lien or other right such other party may have in and to any property of the Debtors' estates upon which Agent holds or asserts a lien or security interest, (b) upon and after the occurrence of an Event of Default, Agent, in its discretion, in connection with a liquidation of

any of the Collateral may use any real property, equipment, leases, trademarks, trade names, copyrights, licenses, patents or any other assets of Debtors which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses; and (c) Agent, in its discretion, shall be authorized to enter, occupy and use any premises subject to any Leasehold Interest or Permitted Mortgage ("Leasehold"), and the furniture, fixtures and equipment located therein, for the purpose of conducting inventory liquidation sales, provided, that, (i) Agent shall pay rent at the rate provided in any applicable lease which may include charges for taxes, insurance, common area charges and utilities, but shall not include the amount of any unpaid rent or other charges due the Landlord as of the date thereof) of the monthly rent and other charges including real estate taxes, insurance, common area charges and utilities, in an amount to be calculated on a pro-rated, per diem basis for each day that Agent actually occupies and uses any Leasehold and (ii) on or before thirty (30) days after the Closing Date (as defined in the Financing Agreements), the Debtors shall use their best efforts to obtain from landlords or mortgagees executed copies of access agreements in form and scope acceptable to Agent and relating to locations identified by Agent. Agent is hereby authorized to have the same access that the Debtors have and enjoy with respect to the Leaseholds.

24. Upon the payment in full of all Obligations and termination of the rights and obligations arising under the Financing Agreements and this Interim Order, Agent and Lenders on the one hand and Debtors on the other shall each be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action with respect to one another pursuant to the terms of this Interim Order and/or the Financing Agreements.

25. All advances and other financial accommodations under the Financing Agreements after the Petition Date are made in reliance on this Interim Order and there shall not at any time be entered in Debtors' Chapter 11 cases any order which (a) authorizes the use of cash collateral of Debtors in which Agent and Lenders have an interest, or the sale, lease, or other disposition of property of Debtors' estates in which the Agent and Lenders have a lien or security interest, or (b) under Section 364 of the Bankruptcy Code authorizing the obtaining of

credit or the incurring of indebtedness secured by any lien equal or senior to any lien of Agent and Lenders, or (c) which has administrative claim status which is equal to or senior to that granted to Agent and Lenders herein; unless, Agent, prior to entry of such an order, shall have given its express prior written consent (and no such consent shall be implied, from any other action, inaction or acquiescence by Agent), or unless the Obligations, without limitation, shall first be indefeasibly paid in full, including all debts and obligations of Debtors to Agent and Lenders which arise or result from the obligations, loans, security interests and liens acknowledged and authorized herein.

26. The security interests and Liens granted to or for the benefit of Agent and Lenders hereunder and the rights of Agent and Lenders pursuant to this Interim Order shall not be altered, modified, extended, impaired or affected by any plan of reorganization of the Debtors and shall continue after confirmation and consummation of any plan until Agent and Lenders are indefeasibly paid in full.

27. In making decisions to make advances to the Debtors under the Financing Agreements or to collect any of the Obligations of Debtors, Agent and Lenders shall not be deemed to be in control of the operations of Debtors or to be acting as a "responsible person" or "owner" or "operator" with respect to the operation or management of the Debtors including, without limitation, with respect to the Collateral and the real property subject to the Agent's liens or Leasehold Interests (as such terms, or any similar terms, are used in the United States Comprehensive, Environmental Response, Compensation and Liability Act, as amended or any similar or other federal or state statute).

28. The provisions of this Interim Order shall inure to the benefit of the Debtors, the Agent and the Lenders and shall be binding upon, among other parties, the Debtors, Agent, the Lenders, the Pre-Petition Lenders, Bankers Trust Company, Hilco and their respective successors and assigns including any Chapter 11 Trustee, Chapter 7 Trustee, any committee, or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to property

of the estates of Debtors and shall also be binding upon all creditors of Debtors and other parties in interest, including, without limitation, all Landlords and holders of Permitted Mortgages.

29. If any or all of the provisions of this Interim Order are hereafter modified, vacated or stayed, such modification, vacation or stay shall not affect (a) the validity of any obligation, indebtedness or liability incurred by Debtors to Agent and Lenders prior to the effective date of such modification, vacation or stay, and any security interests, liens or priorities granted to or rights conferred upon the Agent and Lenders hereunder or (b) the validity or enforceability of any security interest, Lien, or priority authorized or created hereunder or pursuant to the Financing Agreements. Notwithstanding any such modification, vacation or stay, any indebtedness, obligations or liabilities incurred by Debtors to Agent and Lenders prior to the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and Agent and Lenders shall be entitled to all the rights, remedies, privileges and benefits granted herein and pursuant to the Financing Agreements with respect to all such indebtedness, obligations or liabilities. For purposes of Section 364(e) of the Bankruptcy Code, "appeal" shall include any proceeding for reconsideration, rehearing or reevaluation of this Interim Order by this court or any other tribunal. The obligations and indebtedness of Debtors to Agent and Lenders under this Interim Order and the Financing Agreements shall not be discharged by the entry of an order confirming any plan of reorganization in Debtors' bankruptcy cases or under the Bankruptcy Code, unless and until the Obligations are paid in full prior to or concurrently with the "effective date" of any such plan.

30. The Debtors irrevocably waive any right to seek any modifications or extensions of this Interim Order without the prior written consent of Agent, and no such consent shall be implied by any other action, inaction or acquiescence by Agent.

31. To the extent the terms and conditions of the Financing Agreements are in conflict with the terms and conditions of this Interim Order, the terms and conditions of this Interim Order shall control.

32. The terms of the Financing Agreements and the terms of this Interim Order have been negotiated in good faith and at arm's length between Debtors, Agent and the Lenders, and any loans, advances or other financial and credit accommodations which are made or caused to be made to Debtors by Agent or the Lenders pursuant to the Financing Agreements are deemed to have been extended in good faith, as the term "good faith" is used in Section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code.

33. No later than twenty-four (24) hours following the Entry of this Interim Order, the Pre-Petition Lenders shall provide the Debtors and Agent with a "Pay-Off Letter" substantially in the form attached hereto which sets forth the balance of the Chase Claim as of the date of such Pay-Off Letter.

34. The Debtors shall utilize the proceeds of the initial borrowing under the Financing Agreements to retire (or cash-collateralize) the Debtors' obligations to the Pre-Petition Lenders. Upon the receipt by the Pre-Petition Lenders of the proceeds of the wire transfer of all amounts owed to the Pre-Petition Lenders as set forth in the Pay-Off Letter (the "Pay-Off"):

a. Any lien or security interest of the Pre-Petition Lenders on any asset of the Debtors shall be terminated and extinguished and of no force or effect whatsoever;

b. Chase as Collateral Agent (as defined in the Chase Agreements) shall, at the request and expense of the Debtors, promptly after receipt of the Pay-Off, deliver to Agent the stock certificates and promissory notes issued or pledged under the Chase Agreements, execute and deliver any Uniform Commercial Code termination statements, lien, releases, mortgage releases, re-assignments of trademarks, discharges of security interests, and other similar discharge or release documents (and if applicable, in recordable form) as are reasonably necessary to release, as of record, the security interests, financing statements, and all other notices of security interests and liens previously filed by Chase, as the Collateral Agent, with respect to the obligations under the Chase Agreements.

c. Chase, as Administrative Agent (as defined in the Chase Agreements), will, as promptly as practicable upon receipt of the Pay-Off, use its commercially reasonable effort to return to the Debtors the originals of any and all promissory notes and stock certificates, if any, previously delivered to Chase, as Administrative Agent, in connection with the Chase Agreements, duly marked "paid in full" or "cancelled" (or with written authorizations to so mark such documents after the Pay-Off actually occurs) as may be appropriate.

35. Nothing contained herein shall be deemed to terminate or otherwise impair (i) those expense reimbursement, indemnification or other provisions of the Chase Agreements which by their terms survive the repayment of the obligations due thereunder, and the obligations of the Debtors with respect to any such provision shall constitute a super-priority administrative claim, subject only to the super-priority claims granted to Agent and Lenders and to the Carve-Out, or (ii) any other claim or cause of action of Chase or the Pre-Petition Lenders against the Debtors.

36. The payment to the Pre-Petition Lenders, as provided in paragraph 34, shall be without prejudice to the right of Debtors or any Official Creditors' Committee appointed in these proceedings (the "Creditors' Committee") or any other appropriate party with standing to seek to (i) disallow or challenge the amount of the Pre-Petition Lenders' claims, (ii) avoid any security or collateral interest in the assets of the Debtors claimed by the Pre-Petition Lenders, (iii) otherwise challenge the validity, priority or extent of the Pre-Petition Lenders' liens and/or claims, (iv) disgorge all or any part of any payment or transfer made by the Debtors to the Pre-Petition Lenders, or (v) obtain any other relief, legal or equitable, against the Pre-Petition Lenders or otherwise recover from the Pre-Petition Lenders on account of their relationship with the Debtors prior to the commencement of these proceedings; provided, however, any such rights shall be as against Pre-Petition Lenders only and not against Agent or the Lenders and the Obligations under the Financing Agreements shall not be subject to any such disallowance, avoidance, disgorgement or other relief on account of Debtors' payment of the Pre-Petition Lenders' claims; provided, further, however, that in the event that any or all payments to the Pre-Petition Lenders

are disgorged, such disgorgement shall be without prejudice to any rights, claim and obligations of the Pre-Petition Lenders and any other party in interest under that certain Indenture dated as of February 26, 1998 among the Debtors and Bankers Trust Company, as Trustee, including, without limitation, the consequences of any subordination provisions. Any such proceeding shall set forth with reasonable particularity the basis and the reason why the Pre-Petition Lenders' claim should not have been paid in full in accordance with this Interim Order.

37. Notwithstanding any provision of the Agency Agreement, dated as of December 1, 2000 (the "Agency Agreement"), between Hilco, as Agent, and Frank's, as Merchant: (a) Hilco shall not be free to pursue foreclosure and other remedies with respect to the Merchandise and the Proceeds (each as defined in the Agency Agreement) absent relief from the automatic stay under Section 362 of the Bankruptcy Code; and (b) the Debtors, as debtors in possession, shall be entitled (under Sections 105 and 362 of the Bankruptcy Code or otherwise) to object to any request for such relief or to seek to stay, enjoin or otherwise delay or impede Hilco's remedies against the Merchandise and the Proceeds, including, without limitation, Hilco's right to foreclose.

38. The Debtors shall, on or before February 21, 2001, serve by (x) overnight courier copies of a notice of approval of this Interim Order, together with a copy of this Interim Order, to (i) the parties having been given notice of the emergency hearing, (ii) any other party which has filed a request for special notice with this Court and served such request on Debtors' counsel prior to such date, (iii) counsel for any statutory committee; and (iv) to all Landlords; provided, however, that counsel to the Creditors' Committee shall be served as soon as practicable after formation and retention and any party requesting notice shall be served as soon as practicable after receipt by Debtors' counsel of such request. The notice of approval of this Interim Order shall state that any party in interest objecting to the approval of the proposed Final Order shall file written objections with the United States Bankruptcy Court Clerk for the District of Maryland no later than _____, _____, which objections shall be served so that the same

are received on or before 4:30 P.M. of such date by the United States Trustee and the following counsel:

Counsel to Debtors:

Alan J. Lipkin
Tonny K. Ho
Willkie Farr & Gallagher
787 Seventh Avenue
New York, NY 10019
Phone: (212) 728-8000
Fax: (212) 728-8111

and

Martin Fletcher
Whiteford, Taylor & Preston LLP
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Counsel to Agent:

Peter M. Palladino
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Exchange Place
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and

Nancy V. Alquist
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300 East Lombard Street
Baltimore, MD 21202-3268
Phone: (410) 528-5600
Fax: (410) 528-5650

Counsel to Pre-Petition Lenders: Andrew DeNatale
Evan C. Hollander
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Phone: (212) 819-8200
Fax: (212) 345-8113

39. FNC is authorized to execute and deliver the Parent Financing Documents and thereby guarantee all of the Frank's Obligations under the Financing Agreements. FNC's guarantee shall be secured by a lien on and security interest in all of FNC's assets and properties (including, without limitation, the capital stock of Frank's owned by FNC) in favor of the Agent on behalf of the Lenders.

40. Each of the Debtors is authorized to perform all acts, to make, execute and deliver all instruments and documents, to retain all professionals, and to pay fees, expenses and all other amounts including, without limitation, payment of all title insurance premiums, title search costs and filing and recording fees required in connection with the Financing Agreements and the sale of real estate assets, and disbursements incurred prior to the Petition Date which may be required or necessary for their performance under the Financing Agreements, FNC Financing Documents and the related documents. Notwithstanding anything to the contrary contained in this Order, legal descriptions may be attached to this Interim Order in the event the Debtors or Agent or Lenders desire to record this Interim Order in connection with any transactions contemplated by the Financing Agreements. Any such recordation shall be exempt from any filing and recording fees, mortgage recording taxes, documentary stamp taxes, intangible taxes and similar taxes imposed upon such financing or recordation under any federal, state or local law.

41. The final hearing to approve the proposed Final Order shall be held on _____, _____ at _____ before the Honorable _____, United States Bankruptcy Judge.

UNITED STATES BANKRUPTCY JUDGE

cc: Paul M. Nussbaum, Esq.
Martin T. Fletcher, Esq.
Whiteford, Taylor & Preston, L.L.P.
7 Saint Paul Street, Suite 1400
Baltimore, MD 21202-1626

Alan Lipkin, Esq.
Carolynn H.G. Pedreira, Esq.
Steven Wilamowsky, Esq.
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787 Seventh Avenue
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Karen Moore, Esq.
Mark Neal, Esq.
Office of the United States Trustee
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Baltimore, MD 21201

Nancy V. Alquist
Ballard Spahr Andrews & Ingersoll, LLP
300 East Lombard Street
Baltimore, MD 21202-3268

EXHIBIT A
SCHEDULE A-1
CORE PROPERTIES*

Store	Location
5	DEARBORN HTS., MI
15	LINCOLN PARK, MI
26	COLUMBUS, OH
27	COLUMBUS, OH
28	FT. WAYNE, IN
29	FT. WAYNE, IN
30	UTICA, MI
45	BLOOMINGTON, MN
58	COLUMBUS, OH
81	GRANDVILLE, MI
84	CANTON, TWYP., MI
85	PORTAGE, MI
86	FLORENCE, KY
87	EVERGREEN PARK, IL
88	WAUKEGAN, IL
90	MERRILLVILLE, IN
92/401	CLINTON TWP. MI
93	LANSING, MI

* Street Addresses are shown on Schedule E-1

94	TOLEDO, OH
98	ST CHARLES, IL
102	PHILADELPHIA, PA
103	COON RAPIDS, MN
104	OWINGS MILLS, MD
105	EXTON, PA
107	NAPERVILLE, IL
110	CLEARWATER, FL
111	ST. PETERSBURG, FL
112	BLAINE, MN
113	NEW PORT RICHEY, FL
117	TAMPA, FL
118	FLINT, MI
119	LARGO, FL
134	BALDWIN, MO
141	BEDFORD PARK, IL
151	WARREN, MI
156	MICHIGAN CITY, IN
178	SAGINAW, MI*
179	NORTHWOOD, OH
181	NORTON SHORES, MI
188	ST. PAUL, MN

* In escrow, has not closed

189	TOLEDO, OH
199	SPRINGFIELD, OH
202	CINCINNATI, OH
213	BRADENTON, FL
214	FRANKLIN, OH
219	COLUMBUS, IN
240	HUBER HEIGHTS, OH
259	MISHAWAKA, IN
266	CINCINNATI, OH
267	SOUTH BEND, IN
272	WESTFIELD, MA
286	SEA GIRT, NJ
297	ROUND LAKE BEACH, IL
605	W. LONG BRANCH, NJ
622	MILFORD, CT
624	KENVIL, NJ
625	HAZLET, NJ
638	HOWELL, NJ
645	TAUTON, MA
648	BROCKTON, MA
649	HADLEY, MA
652	SPRINGFIELD, MA

EXHIBIT B**SCHEDULE A-2****SECOND PRIORITY REAL ESTATE***

STORE	LOCATION
25	GRAND RAPIDS, MI
32	COLUMBUS, OH
33	GRAND RAPIDS, MI
34	OKEMOS, MI
65	ROSEVILLE, MN
80	FLINT, MI
99	BROOKHAVEN, PA
100	JOLIET, IL
101	DEPTFORD, NJ
106	LIBERTYVILLE, IL
135	BRIDGETON, MO
139	ST. CHARLES, IL
140	LAKE ZURICH, IL
142	CINCINNATI, OH
163	CRYSTAL LAKE, IL
167	SCHAUMBURG, IL
168	BATTLE CREEK, MI
205	LOUISVILLE, KY

* Street Addresses are shown on Schedule E-1

208	LOUISVILLE, KY
244	EDEN PRAIRIE, MN
245	EAGAN, MN
265	ST. CHARLES, MO
277	BLOOMFIELD, MI
601	HUNTINGTON, NY
623	STATEN ISLAND, NY
626	BRICK TOWN, NJ
628	BRIDGEWATER, NJ
631	BRANFORD, CT
633	SOUTHINGTON, CT
636	FARMINGTON, CT
639	KINGSTON, NY
643	EAST HARTFORD, CT

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re)	
)	Case No. 01-_____
FRANK'S NURSERY & CRAFTS, INC., <u>et al.</u> ,)	(Chapter 11)
)	(Jointly Administered)
)	
Debtors.)	

BRIDGE STIPULATION AND ORDER (I) AUTHORIZING
AND RESTRICTING USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363 AND BANKRUPTCY
RULE 4001(b); AND (II) GRANTING ADEQUATE
PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363

This Stipulation and Order (the "Stipulation and Order") is made by and among Frank's Nursery & Crafts, Inc. (the "Borrower") and FNC Holdings Inc. (f/k/a General Host Corporation) ("FNC"), debtors and debtors-in-possession (collectively, the "Debtors"), and the lenders party to that certain Credit Agreement dated as of December 24, 1997 (as amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 cases, the "Existing Credit Agreement," and together with all documents at any time executed in connection therewith (the "Pre-Petition Credit Documents") among the Borrower, Cyrus Acquisition Corp., FNC, the lenders party thereto (the "Pre-Petition Lenders"), The Chase Manhattan Bank, as Administrative, Syndication and Collateral Agent (the "Administrative Agent"), and Goldman Sachs Credit Partners, L.P., as Documentation Agent.

IT IS HEREBY FOUND that:

A. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions for relief with this Court under Chapter 11 of the Bankruptcy Code commencing these

cases (the “Chapter 11 Cases”). The Debtors are authorized to continue to operate their businesses and to manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

B. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered. No trustee, examiner or creditors’ committee has yet been appointed in the Chapter 11 Cases nor has a request for the appointment of a trustee or examiner been made.

C. This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of this Stipulation and Order constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are Sections 105, 361, 362 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b), (c) and (d). Venue of the Chapter 11 Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Each Debtor admits that, prior to the Petition Date and pursuant to the Pre-Petition Credit Documents, the Pre-Petition Lenders made loans and advances to the Borrower and issued or caused to be issued letters of credit on the Borrower’s behalf (collectively, the “Pre-Petition Loans”), secured by first-priority security interests and liens on substantially all of the then existing and after-acquired real and personal property of the Debtors (the “Pre-Petition Collateral”).

E. The Debtors admit that, as of the Petition Date, the Borrower was indebted to the Pre-Petition Lenders under the Existing Credit Agreement in the aggregate sum of approximately \$62.3 million, including approximately \$3 million of contingent obligations in respect of outstanding letters of credit issued under the Existing Credit Agreement, plus interest,

costs, fees and expenses, along with other amounts which may become owing on account of events or occurrences after the Petition Date (collectively, the “Pre-Petition Indebtedness”) and that all Guarantors¹ under the Parent Guarantee Agreement were indebted to the Pre-Petition Lenders in such amount in accordance therewith. The Debtors believe, after due inquiry, (a) in the legality, validity and enforceability of the Pre-Petition Indebtedness owing to each Pre-Petition Lender as shown on the books and records of such Pre-Petition Lender and/or the Administrative Agent and (b) that the security interests and liens held by the Pre-Petition Lenders and the Administrative Agent in and upon the Pre-Petition Collateral (the “Pre-Petition Security Interests”) are duly perfected, legal, valid, binding and enforceable first-priority liens and security interests on the Pre-Petition Collateral, except to the extent that any such liens and security interests are junior and subordinated to any valid pre-existing liens and security interests that were senior to the Pre-Petition Security Interests as of the Petition Date (the “Senior Liens”).

F. Each Debtor currently believes that the value of the Pre-Petition Collateral exceeded the sum of the Obligations on the Petition Date.

G. Each Debtor further admits, after due inquiry, that the Pre-Petition Collateral includes, without limitation, (i) substantially all cash and (ii) all negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents, whenever acquired, in which such Debtor has an interest, as well as all proceeds of the Pre-Petition Collateral, whether existing before or after the commencement of the Chapter 11 Cases, which items constitute the Administrative Agent’s and the Pre-Petition Lenders’ cash collateral within

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in
(continued...)

the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Administrative Agent and the Pre-Petition Lenders assert they are entitled, pursuant to Sections 361 and 363 of the Bankruptcy Code, to adequate protection of their interests in the Pre-Petition Collateral, including the Cash Collateral, resulting from the use of the Cash Collateral, the use, sale or lease of the Pre-Petition Collateral (other than the Cash Collateral) and the imposition of the automatic stay of Section 362 of the Bankruptcy Code.

H. Good cause has been shown for entry of this Stipulation and Order. The relief requested herein is necessary, essential and appropriate for the continued survival and operation of the Debtors' businesses during the Bridge Period (as defined below), absent which the Debtors' ability to maximize the value of their estates for the benefit of their creditors will be irreparably jeopardized. The Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses during the Bridge Period without the proposed use of the Cash Collateral. The ability of the Debtors to pay employees, to maintain business relationships with their customers, vendors and suppliers, and otherwise to finance their operations during the Bridge Period is essential to the preservation of the Debtors' value. In the absence of the proposed use of the Cash Collateral, the continued operation of the Debtors' businesses will not be possible and serious and irreparable harm to the Debtors, their estates and their creditors would occur. Entry of this Stipulation and Order will minimize disruption of the Debtors' businesses and operations and will permit the Debtors to meet payroll and other

(...continued)

the Existing Credit Agreement.

operating expenses during the Bridge Period. Approval of this Stipulation and Order is therefore in the best interests of the Debtors', their estates and their creditors.

I. The Pre-Petition Lenders will not consent to the use of the Cash Collateral during the Bridge Period absent the approval of the terms and conditions set forth herein, and the relief hereinafter ordered is necessary to avoid immediate and irreparable harm to the Debtors' estates.

J. The Pre-Petition Collateral securing the Pre-Petition Indebtedness constitutes substantially all of the Debtors' assets. The Debtors currently are unable to immediately obtain the funds required to replace the Cash Collateral in the form of unsecured credit or unsecured debt allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to Section 364(a) or (b) of the Bankruptcy Code, unsecured credit or unsecured debt having the priority afforded by Section 364(c)(1) of the Bankruptcy Code, or debt or credit secured as described in Section 364(c)(2) or (3) of the Bankruptcy Code.

K. On the Petition Date, the Debtors also filed a motion seeking approval of a post-petition financing agreement to be provided by a group of lenders led by Wells Fargo Retail Finance, LLC (the "Take-Out DIP Facility") and related provisions regarding the use of cash collateral. The Debtors have represented that the Take-Out DIP Facility will be used, in part, to satisfy all outstanding Obligations under the Pre-Petition Credit Documents. The Administrative Agent and the Pre-Petition Lenders have relied on this representation in consenting to the use of Cash Collateral during the Bridge Period.

L. Notice of the hearing to consider this Stipulation and Order (the "Hearing") and the terms hereof has been given to (i) the Office of the United States Trustee for the District of Maryland; (ii) counsel to the lenders under the Take-Out DIP Facility, (iii) counsel

to the Administrative Agent and the Pre-Petition Lenders; (iv) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis, (v) the indenture trustee for the holders of the Debtors' public debentures and (vi) certain holders of existing liens. In view of the urgency of the relief requested, such notice constitutes sufficient and appropriate notice of the Hearing and no further notice need be given.

M. The proposed use of the Cash Collateral has been negotiated in good faith and at arms' length between the Debtors, the Pre-Petition Lenders and the Administrative Agent, with all parties represented by counsel.

N. The proposed use of the Cash Collateral is fair and reasonable, reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and is supported by reasonably equivalent value and fair consideration.

O. Pursuant to the Bankruptcy Code, the Debtors are required to provide adequate protection to the Administrative Agent and Pre-Petition Lenders in respect and to the extent of, inter alia, any diminution of the value of the Pre-Petition Collateral (including the Cash Collateral), resulting from their use of the Pre-Petition Collateral (including the Cash Collateral), and the imposition of the automatic stay of Section 362 of the Bankruptcy Code. The protections provided pursuant to the terms and conditions of this Stipulation and Order shall be deemed to constitute adequate protection of the interests of the Administrative Agent and the Pre-Petition Lenders in the Cash Collateral during the Bridge Period.

P. The Debtors have requested immediate entry of this Stipulation and Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use the Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Stipulation and Order is in the best interest of the Debtors' estates and

creditors, as its implementation will, among other things, permit the Debtors to maintain the operation of their businesses during the Bridge Period, preserve the value of their estates and enhance their prospects for successful reorganization.

Q. Based upon the foregoing findings and conclusions, and upon the record made by the Debtors at the Hearing, and any objections to this Stipulation and Order having been withdrawn, resolved or overruled, and good and sufficient cause appearing therefor,

IT IS HEREBY STIPULATED, CONSENTED, AGREED AND ORDERED
that:

Authorization

1. This Stipulation and Order has no force or effect, and the Debtors are not authorized to use any of the Cash Collateral, unless and until this Stipulation and Order is signed by the Court.

2. The Debtors are expressly authorized to use the Cash Collateral during the period through three (3) business days from the Petition Date (the "Bridge Period") on the terms and subject to the conditions set forth in this Stipulation and Order. The Debtors' authority to use Cash Collateral hereunder shall terminate at the expiration of the Bridge Period or pursuant to the provisions of paragraph 15 hereof. Notwithstanding any termination of the authority to use the Cash Collateral pursuant to the terms hereof, all liens, priorities, rights and remedies provided to the Administrative Agent and/or the Pre-Petition Lenders in this Stipulation and Order shall survive such termination and remain in full force and effect with respect to any Obligations and the Pre-Petition Indebtedness, and claims and obligations arising under this Stipulation and Order, outstanding on such termination date.

3. The Debtors are authorized to use \$_____ of cash during the Bridge Period to, inter alia, provide for working capital and general corporate requirements in accordance with the Budget supplied by the Debtors in connection with the Take-Out DIP Facility.

Acknowledgment of Claims, Liens and Security Interests

4. This Court finds that the Debtors believe that as of the Petition Date: (a) the Obligations and the Pre-Petition Indebtedness constitute legal, valid, binding and enforceable obligations of the Debtors; (b) the amount of the Obligations and the Pre-Petition Indebtedness due and payable to the Administrative Agent and the Pre-Petition Lenders as of the Petition Date is approximately \$62.3 million, including approximately \$3 million of contingent obligations in respect of outstanding letters of credit issued under the Existing Credit Agreement, being the amount due to the Administrative Agent and the Pre-Petition Lenders according to the books and records of the Administrative Agent and/or the Pre-Petition Lenders as of the Petition Date, plus interest, costs, fees and expenses; and (c) the liens and security interests of the Administrative Agent and the Pre-Petition Lenders upon the Pre-Petition Collateral are legal, valid, binding, perfected and enforceable, except that such liens and security interests are junior and subordinate to the Senior Liens.

Replacement Liens

5. Solely to the extent that, inter alia, the imposition of the automatic stay of Section 362 of the Bankruptcy Code, or the use of the Cash Collateral or the other Pre-Petition Collateral or any other event results in a diminution in the value of the Pre-Petition Lenders' and the Administrative Agent's interest in the Pre-Petition Collateral (including the Cash Collateral), but solely to the extent such diminution results in the value of the Pre-Petition Lenders' and the

Administrative Agent's interest in the Pre-Petition Collateral being below the amount of the Obligations (the "Diminution Claim"), and as adequate protection for any Diminution Claim resulting from the use by the Debtors of the Cash Collateral and the other Pre-Petition Collateral, the Administrative Agent and the Pre-Petition Lenders shall have and are hereby granted (effective upon the date of this Stipulation and Order and without the necessity of the execution by the Debtors, or filing, of security agreements, pledge agreements, mortgages, financing statements or otherwise):

(i) first-priority liens and security interests on all unencumbered assets of the Debtors (whether heretofore or hereafter acquired), excluding all property recovered by the Debtors pursuant to the provisions of Sections 541, 544, 547, 548, 549 and 550 of the Bankruptcy Code (the "Avoidance Recovery Property");

(ii) junior liens and security interests on all assets currently encumbered by the Senior Liens, junior and subordinate to the liens and security interests of the holders of such Senior Liens; and

(iii) liens and security interests priming all other security interests on the Pre-Petition Collateral, other than the Senior Liens, including, but not limited to, the Pre-Petition Security Interests.

The liens and security interests provided to the Administrative Agent and the Pre-Petition Lenders in this paragraph 5 are hereafter collectively referred to as the "Replacement Liens" and the collateral subject to the Replacement Liens is hereinafter referred to as the "Post-Petition Collateral". The Replacement Liens shall be deemed perfected as of the commencement of the Chapter 11 Cases, shall not be subject to, or pari passu with, any lien or security interest existing as of the Petition Date or granted or arising thereafter (including, without limitation, liens and security interests, if any, granted in favor of any federal, state, municipal or other governmental unit, commission or board for any liability of the Debtors) other than the Senior Liens and, except as otherwise specifically provided in this Stipulation and Order, shall be valid and enforceable against any trustee appointed in any Chapter 11 Case or in a subsequent

proceeding upon the conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

Automatic Perfection/Financing Documents

6. Without the necessity of the filing of financing statements, mortgages or other documents, this Stipulation and Order shall be sufficient evidence of the Administrative Agent's and the Pre-Petition Lenders' perfected liens on and security interests in all Post-Petition Collateral as described herein to secure the Diminution Claim.

7. The Administrative Agent and the Pre-Petition Lenders may, in their discretion, file a photostatic copy of this Stipulation and Order as a financing statement in any jurisdiction, and in such event, the subject filing or recording officer is authorized and directed to file or record such copy of this Stipulation and Order.

Priority Claims

8. In addition to the grants of liens and security interests herein, solely to the extent of the Diminution Claim, the Administrative Agent and the Pre-Petition Lenders shall have and are hereby granted, effective upon the date of this Stipulation and Order, allowed administrative expense claims pursuant to Section 507(b) of the Bankruptcy Code, with priority in payment over all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) and 726 of the Bankruptcy Code, excluding any Avoidance Recovery Property (the "Pre-Petition Lender Superpriority Claims"). No cost or expense of administration under Sections 105, 364(c)(1), 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant

to Section 1112 of the Bankruptcy Code, and no priority claims, shall be senior to, or pari passu with, the Pre-Petition Lender Superpriority Claims.

Interest; Fees and Expenses

9. As additional adequate protection hereunder, the Administrative Agent and the Pre-Petition Lenders shall (within one (1) business day of the approval of this Stipulation and Order) receive payment of accrued and unpaid interest on each Pre-Petition Loan due and payable under the Pre-Petition Credit Documents on or prior to the Petition Date at the non-default rate in effect under the Existing Credit Agreement, and the Administrative Agent shall be entitled to the payment of all accrued and unpaid fees and expenses (including reasonable attorneys' fees). Additionally, interest on the Pre-Petition Loans shall continue to accrue from the Petition Date through the expiration of the Bridge Period at the non-default rate under the Existing Credit Agreement and shall be payable on the terms set forth therein.

Cash Management

10. The Debtors, and each of their manager and employees, are authorized and directed to (i) deposit on a daily basis into such store's local depository account all cash and other negotiable instruments in excess of amounts that are necessary for ordinary course store operations (with the amount retained not to exceed at any time \$1,000 per retail store owned by a Debtor), (ii) report on a daily basis the amount of each such deposit to ADP and (iii) to otherwise adhere strictly to all of the other standard operating procedures relating to store bank deposits. In addition, the Debtors are directed to continue the existing accounts collection arrangement specified in the Pre-Petition Credit Documents.

Reporting Requirements

11. During the Bridge Period, the Debtors shall be required to provide Borrowing Base Certificates to the Administrative Agent in accordance with the terms of the Existing Credit Agreement.

Fair and Reasonable

12. Based upon the terms of this Stipulation and Order and the Administrative Agent's and the Pre-Petition Lenders' consent thereto, the payments, liens, superpriority claims and other protections provided in the Stipulation and Order are fair and reasonable to protect the interests of the Administrative Agent and the Pre-Petition Lenders.

No Implied Authorization

13. Nothing in this Stipulation and Order shall be construed as or deemed to constitute the consent of the Administrative Agent or any Pre-Petition Lender to the use, sale or lease of the Pre-Petition Collateral (including the Cash Collateral) outside of the ordinary course of the Debtors' business. Except for transactions in the ordinary course of the Debtors' businesses or except as otherwise expressly permitted in the Existing Credit Agreement, no Debtor shall sell, transfer, lease, encumber or otherwise dispose of any of the property of its estate without the prior written consent of the Required Lenders, and no such consent shall ever be implied from any other action, inaction or acquiescence by the Administrative Agent or any Pre-Petition Lender.

Termination Events

14. During the Bridge Period, the Debtors shall not seek (except that with respect to subsection (k) below the Debtors may seek), and in all cases it shall constitute a "Termination Event" if, except with the express written consent of the Required Lenders, which consent shall not be implied:

(a) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 7 or Chapter 11 trustee, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, shall be appointed in any of the Chapter 11 Cases; or

(b) the Court or any other court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest (other than the security interests of the Administrative Agent or the Pre-Petition Lenders to the extent granted in this Stipulation and Order) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Debtor which have a value in excess of \$1,000,000 in the aggregate; or

(c) an order of the Court or any other court shall be entered amending, supplementing, staying, vacating, reversing, revoking, rescinding or otherwise modifying this Stipulation and Order, provided that no Termination Event shall occur under this clause (c) to the extent that any such amendment, supplement or other modification is not materially adverse, in the reasonable judgment of the Administrative Agent, to the rights and interests of the Pre-Petition Lenders under this Stipulation and Order; or

(d) an order of the Court or any other court shall be entered granting any lien or security interest in any property of the Debtors in favor of any party other than the Administrative Agent and the Pre-Petition Lenders pursuant to this Stipulation and Order, or granting a claim to any party other than the Administrative Agent and the Pre-Petition Lenders that is pari passu with or senior to the claims granted to the Administrative Agent and the Pre-Petition Lenders pursuant to this Stipulation and Order; or

(e) any Debtor shall file any pleading seeking, or otherwise consenting to, or shall support or acquiesce in any other Person's motion as to, any of the matters set forth in paragraphs (a) through (d) above; or

(f) the Debtors' authority to use Cash Collateral hereunder shall have otherwise terminated, including, without limitation, due to the lack of entry of an order authorizing post-petition financing satisfactory in form and substance to the Administrative Agent and the Pre-Petition Lenders by the expiration of the Bridge Period; or

(g) any Debtor shall make any payment on or in respect of any pre-Petition Date indebtedness or obligations other than such payments authorized by the Court in respect of (i) accrued payroll and related expenses and employee benefits as of the Petition Date and (ii) the satisfaction and termination of the Obligations; or

(h) any Debtor shall fail to comply with the terms of this Stipulation and Order in any material respect; or

(i) this Court shall abstain from hearing any Chapter 11 Case, or any Debtor shall so move or support any motion brought by any third party seeking such relief; or

(j) any Debtor shall seek to, or shall support (in any such case by way of, inter alia, any motion or other pleading filed with this Court or any other writing to another party-in-interest executed by or on behalf of a Debtor) any other Person's motion to, disallow or subordinate in whole or in part any Pre-Petition Lender's claim in respect of the Pre-Petition Indebtedness or the Obligations or to challenge the validity, enforceability, perfection or priority of the liens in favor of the Administrative Agent or any Pre-Petition Lender (including, without limitation, the liens securing the Obligations owed to such Pre-Petition Lender); or

(k) the filing of any motion to obtain credit from any party, except on terms equal to the Take-Out DIP Facility, other than the Administrative Agent and the Pre-Petition Lenders unless, in connection therewith, all the Obligations and the Pre-Petition Indebtedness shall first be paid indefeasibly in full in cash (including the cash collateralization of letters of credit).

Remedies

15. Upon the occurrence of any Termination Event, and at any time during the continuance thereof, the Debtors' right to use the Cash Collateral will automatically terminate and, without further order of or application to the Court, the Administrative Agent may and, at the request of the Required Lenders, shall freeze any funds of the Debtors in any accounts maintained with the Administrative Agent. All such rights and remedies may be taken without further modification of the automatic stay pursuant to Section 362 of the Bankruptcy Code (which is hereby deemed modified and vacated to the extent necessary to permit such exercise of rights and remedies and the taking of such actions).

Survival

16. The provisions of this Stipulation and Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any plan of reorganization in any

of the Chapter 11 Cases, (b) converting any of the Chapter 11 Cases to a Chapter 7 case, or (c) dismissing any of the Chapter 11 Cases or pursuant to which this Court abstains from hearing any of the Chapter 11 Cases, and the terms and provisions of this Stipulation and Order and the Administrative Agent's and the Pre-Petition Lenders' claims, liens and security interests granted pursuant to this Stipulation and Order and the Pre-Petition Credit Documents shall continue in full force and effect notwithstanding the entry of any such order, and the Administrative Agent's and the Pre-Petition Lenders' liens, security interests and claims shall maintain their priority as provided by this Stipulation and Order and the Pre-Petition Credit Documents until all of the Obligations and the Pre-Petition Indebtedness are indefeasibly paid in full in cash.

Limitation on Actions

17. Any appropriate party with standing, such as a Committee, may commence any adversary proceeding or contested matter challenging the validity, enforceability or priority of the Obligations or the Pre-Petition Indebtedness or, to the extent they secure the Obligations or the Pre-Petition Indebtedness, the Administrative Agent's and the Pre-Petition Lenders' liens on or security interests in the Pre-Petition Collateral, or otherwise assert any claim or cause of action against the Administrative Agent and the Pre-Petition Lenders (any such adversary proceeding or contested matter, a "Challenge Action"), no later than the date that is nine (9) months after the formation of a statutory committee appointed in the Chapter 11 Cases (each, a "Committee"). If no such Challenge Action is properly commenced as of such date, the Obligations and the Pre-Petition Indebtedness shall constitute allowed claims, not subject to subordination, for all purposes in the Chapter 11 Cases, and the Administrative Agent's and the Pre-Petition Lenders' liens on and security interests in the Pre-Petition Collateral shall be deemed legal, valid, binding, perfected, enforceable and otherwise unavoidable, and the Obligations and the Pre-Petition

Indebtedness and the Administrative Agent's and the Pre-Petition Lenders' liens on and security interests in the Pre-Petition Collateral shall not be subject to any other or further challenge by any party in interest. In the event that this Court determines that any portion of the Take-Out DIP Facility paid to the Administrative Agent or to the Pre-Petition Lenders should be disgorged as a result of a successful Challenge Action (other than a Challenge Action for which joint and several liability would result under applicable law) (a "Disgorgement Ruling"), the Administrative Agent and each Pre-Petition Lender shall be obligated to repay its allocable share of the Disgorgement Ruling from funds received and applied to the Obligations owed to the Administrative Agent and such Pre-Petition Lender, as applicable, but neither the Administrative Agent nor any Pre-Petition Lender shall be jointly or severally liable to repay the amount of any Disgorgement Ruling.

Reservation of Rights

18. Except as otherwise specifically provided herein, entry of this Stipulation and Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Administrative Agent or any Pre-Petition Lender may have against any Debtor or any third parties, and without prejudice to the right of the Administrative Agent or any Pre-Petition Lender to seek relief from the automatic stay in effect pursuant to Section 362 of the Bankruptcy Code, or any other relief under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right of the Administrative Agent or the Pre-Petition Lenders to (i) request additional adequate protection of their interests in the Pre-Petition Collateral (including, without limitation, the Cash Collateral) or relief from or modification of the automatic stay under Section 362 of the Bankruptcy Code, (ii) request conversion of any of the

Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code and (iii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans.

19. Upon execution of this Stipulation and Order by the Court, the provisions hereof shall be immediately binding upon and inure to the benefit of the Administrative Agent, the Pre-Petition Lenders, the Debtors and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases or in any superseding Chapter 7 case as a legal representative of any of the Debtors or the Debtors' estates.

Debtors Must Maintain Insurance

20. The Debtors shall deliver to the Administrative Agent evidence satisfactory to the Administrative Agent that, to the extent available, all material tangible Pre-Petition Collateral and Post-Petition Collateral (collectively, the "Collateral") is adequately insured under insurance policies acceptable to the Administrative Agent under which the Administrative Agent is named as loss payee.

No Release of Non-Debtors

21. Nothing contained in this Stipulation and Order shall be deemed to terminate, modify or release any obligations of any non-debtor guarantor to the Administrative Agent or any Pre-Petition Lender with respect to the Obligations.

No Third-Party Beneficiaries

22. No rights are intended to be created hereunder for the benefit of any third party or creditor or any direct or indirect incidental beneficiary except as specifically provided herein.

Effectiveness

23. This Stipulation and Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon execution by the Court. Except as otherwise provided herein, the terms of this Stipulation and Order shall be valid and binding upon the Debtors, all creditors of the Debtors, any Committee and all other parties in interest from and after the execution of this Stipulation and Order by this Court.

Waiver, Modification and Amendment

24. No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by the parties hereto (at the direction of the Required Lenders) and approved by the Court.

No Lender Control

25. Neither the Pre-Petition Lenders nor the Administrative Agent shall be deemed in control of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) by reason of the rights provided hereunder, or their exercise of such rights.

No Surcharge

26. No party in interest in these Chapter 11 Cases shall be entitled to assert a claim under Section 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection, disposition or enhancement of, or realization by any party in interest on, the Collateral.

Binding Effect on Trustee

27. The admissions and acknowledgments of the Debtors expressly stated in paragraphs D, E and F of this Stipulation and Order with respect to the validity, amount, priority and non-avoidability of the Pre-Petition Security Interests and claims of the Pre-Petition Lenders shall be binding upon any trustee appointed in any of the Chapter 11 Cases or any superseding Chapter 7 case as the legal representative of any Debtor's estate.

Notice

28. The Debtors shall, on or before February __, 2001, mail copies of a notice of the approval of this Stipulation and Order, together with a copy of this Stipulation and Order, to the United States Trustee for the District of Maryland and all parties who appeared or otherwise responded to the relief requested herein, to any other party which, prior to such date, has filed a request for notices with this Court and served such notice upon the Debtors' counsel, to counsel for any Committee (or barring timely appointment of such Committee, to the extent practicable, to all of the Debtors' consolidated thirty (30) largest unsecured creditors), to the Administrative Agent and to counsel to the Administrative Agent and the Pre-Petition Lenders.

Dated: Baltimore, Maryland
February __, 2001

UNITED STATES BANKRUPTCY JUDGE

AGREED AND CONSENTED TO:

WILLKIE FARR & GALLAGHER
for and on behalf of the Debtors

By: _____
Name:

WHITE & CASE LLP for and on behalf
of the Administrative Agent and the
Pre-Petition Lenders

By: _____
Name:

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